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March 23, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 and AT&T Petition for Declaratory Ruling Regarding Payphone Compensation Rate Caps, CCB/CPD 01-05*

Dear Ms. Salas:

Enclosed for filing please find the original and five copies of the Comments of Qwest Communications Corporation, SBC Communications Inc., and the Verizon Telephone Companies in the above-referenced proceeding. Please date stamp and return the additional copy.

If you have any questions concerning this filing, please contact me at (202) 326-7921.

Sincerely,



Aaron M. Panner

Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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MAR 23 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the)	
Telecommunications Act of 1996)	
AT&T Petition for Declaratory Ruling)	
Regarding Payphone Compensation)	CCB/CPD No. 01-05
Rate Caps)	

**COMMENTS OF QWEST COMMUNICATIONS CORPORATION,
SBC COMMUNICATIONS INC., AND THE VERIZON TELEPHONE COMPANIES**

Qwest Communications Corporation, SBC Communications Inc., and the Verizon telephone companies, pursuant to the Public Notice released February 22, 2001, hereby support AT&T's request for a declaratory ruling barring application of state rate caps to prevent carriers from recovering payphone compensation from individuals placing calls from payphones. The Commission contemplated that carriers could assess such charges. Application of a state rate cap to block such recovery is inconsistent with the FCC's regulations governing per-call compensation, and is therefore preempted.

Section 276(b)(1)(A) of the Communications Act directs the Commission to adopt regulations that "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A). The Commission complied with this requirement by requiring the payment of per-call compensation on all calls for which PSPs are not otherwise compensated. *See* 47 C.F.R. § 64.1300. The charge applies to *all* calls — intrastate or interstate — pursuant to the authority explicitly delegated to the Commission in section 276(b)(1)(A).

In the *Payphone Orders*, the Commission also addressed the manner in which carriers may recover the per-call compensation charge from their customers. It held that its “carrier-pays system . . . gives IXCs the most flexibility to recover their own costs, whether through increased rates to all or particular customers, *through direct charges to access code call or subscriber 800 customers*, or through contractual agreements with individual customers.”¹ Indeed, the FCC explicitly held that “the compensation approach adopted in the *Report and Order* gives carriers the ability . . . to bill their customers for whatever amount they choose *for use of the payphone*. Carriers may find that billing such a payphone charge would give visibility to the public of the cost of using the payphone.”²

The Commission’s discussion of this issue makes clear that a carrier may, if it chooses, impose a separate fee on its customers for making a compensable call from a payphone, as opposed to a call made from another location where no per-call compensation must be paid. This reflects the reality that the per-call compensation charge is a separate, federally mandated charge that compensates the payphone provider for the use of the payphone. Although the carrier is not required to pass the fee on to its customers, and may not bill “a particular government-mandate fee for use of payphones on behalf of PSPs,”³ the carrier is *permitted* to pass on to its customers a

¹ Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, 20584, ¶ 83 (1996) (emphasis added; footnote omitted).

² Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233, 21276, ¶ 90 (1996) (emphasis added).

³ *Id.*

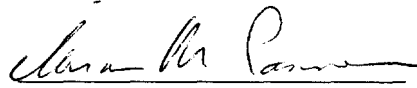
fee *for the use of the payphone* that is separate from whatever fee the carrier may impose for the telecommunications services provided.

Application of a state rate cap to prevent a carrier from recovering the costs of per-call compensation as a separate fee on top of whatever charges the state permits for the intrastate telecommunications service at issue would be “inconsistent with the Commission’s regulations.” 47 U.S.C. § 276(c). When a caller uses a payphone to make a long-distance call, the caller is using the services of both the PSP and the carrier, rather than of the carrier alone. While the Commission’s rules provide that it is the carrier, not the caller, who directly compensates the PSP, the *Payphone Orders* make equally clear that a carrier is permitted to recover that separate cost from callers.

To be sure, federal law does not authorize a carrier to use the payphone compensation requirement as a way of *evading* otherwise legitimate state rate caps on a carrier’s charges for long-distance calling. But if a payphone surcharge is imposed to recover the costs of per-call compensation in those circumstances where the carrier actually pays compensation to the owner of the payphone from which the call was made, such charges are authorized by federal law, and a state may not apply its rate caps to prevent their recovery.

Accordingly, the Commission should grant the petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron M. Panner", written over a horizontal line.

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*Attorneys for Qwest Communication Corp.,
SBC Communications Inc., and the Verizon
telephone companies*

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of March 2001, I caused one copy of Comments of Qwest Communications Corporation, SBC Communication Inc., and the Verizon Telephone Companies to be served by hand delivery (indicated by asterisk) or by first-class mail, postage prepaid, on the following parties:

Heather Hauser
Heather S. Hauser

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